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Total Number of Pages in This Submission

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Filing Date	May 14, 2001
First Named Inventor	Donald Robert Martin Boys
Art Unit	2616
Examiner Name	Qureshi, Afsar M.
Attorney Docket Number	115480-148837

### ENCLOSURES (Check all that apply)

<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement  <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers  <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):  Return Receipt Postcard
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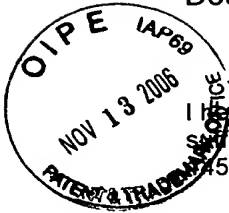
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Docket No.: 115480-148837

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Board of Patent Appeals and Interferences

App. No. : 09/855,819 Confirmation No.: 9684  
Inventor : Donald Robert Martin Boys  
Filed : May 14, 2001  
Title : MOBILE WIRELESS INTERNET PORTABLE RADIO  
Art Unit : 2616  
Examiner : Qureshi, Afsar M.  
Customer No. : 25,943

MAIL STOP: APPEAL BRIEF-PATENTS  
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**RESUBMISSION OF APPELLANT'S BRIEF IN SUPPORT OF APPELLANT'S  
APPEAL TO THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Dear Sir:

This is a re-submission of Appellant's Brief in response to the Non-Compliant Notice mailed on November 1, 2006. The deficiency has been corrected. This appeal furthers the Notice of Appeal filed on September 1, 2006. The appeal arises from a final decision by the Examiner in the final Office Action, dated April 14, 2006. The final decision was in response to arguments filed on January 10, 2006, in response to an earlier office action, mailed October 19, 2005.

Appellants re-submit this *Brief on Appeal*. Payment in the amount of \$500.00 to cover the fee for filing the *Brief on Appeal* was tendered with the original submission.

Appellant respectfully requests consideration of this appeal by the Board of Patent Appeals and Interferences for allowance of the present patent application.

**Real Party in Interest:**

The Real Party in Interest is Lonecraft Limited, LLC of Wilmington, DE, assignee of the application by virtue of two unrecorded assignments, one from the individual inventor Donald Robert Martin Boys and the other from Soundstarts, Inc. et al. which held title under an assignment recorded at Real 017007 Frame 0722; a copy set of the unrecorded assignments is included with this Appeal Brief as an attachment. The assignments were executed on December 7, 2005 and December 13, 2005. Assignee Lonecraft Limited is in the process of recording the assignments.

**Related Appeals and Interferences:**

To the best of Appellant's knowledge, there are no related appeals or interference proceedings currently pending, which would directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

**Status of Claims:**

Appellant appeals the rejection of claims 38-49, which were rejected in the final Office Action dated April 14, 2006. Claims 38-49 are reproduced, as pending, in Appendix A. Claims 1-37 were previously cancelled and are not involved in this appeal.

**Status of Amendments:**

Appellants have offered no amendments subsequent to the Examiner's final rejection.

**Summary of the Claimed Subject Matter:**

Independent claim 38 is directed towards *a web browser application for an Internet-connectable audio-player device* that comprises:

“a mechanism for invoking a Universal resource Locator (URL) of an accessible site on the Internet; and  
functionality for reading embedded code in the site to find a link to downloadable audio content;  
wherein the browser determines a link is a link to downloadable audio content by presence of code for initiating an audio player application.”

Figure 1 illustrates one example of an Internet-connected wireless mobile-radio-broadcast system having a user 41, the user having an audio-player device including a web browser application as recited by claim 38. Figure 1 is described in detail on page 7, line 17 through page 10, line 13, in accordance with some embodiments. Figure 2 illustrates one example of an Internet-connectable audio-player device including a web browser application as recited by claim 38. Figure 2 is described in detail on page 10, line 14 through page 14, line 20, in accordance with some embodiments. Figure 4 illustrates one example of a block diagram of the software capability of an audio-player device, including a browser 103, as recited by claim 38. Figure 4 is described in detail on page 16, line 20 through page 21, line 5, in accordance with some embodiments.

Independent claim 44 is directed towards *a method for finding and invoking live audio data streams associated with links on a Web site* that comprises

“(a) invoking a Universal resource Locator (URL) of an accessible site on the Internet from an Internet-connectable audio-player device;  
(b) upon accessing the accessible site, reading embedded code in the site to find a link to downloadable audio content; and  
(c) determining a link is a link to downloadable audio content by presence of code for initiating an audio player application.”

Figure 1 illustrates one example of an Internet-connected wireless mobile-radio-broadcast system having a user 41, the user having an audio-player device including a

web browser application capable of performing the operations recited by claim 44. Figure 1 is described in detail on page 7, line 17 through page 10, line 13, in accordance with some embodiments. Figure 2 illustrates one example of an Internet-connectable audio-player device including a web browser application capable of performing the operations recited by claim 44. Figure 2 is described in detail on page 10, line 14 through page 14, line 20, in accordance with some embodiments. Figure 4 illustrates one example of a block diagram of the software capability of an audio-player device, including a browser 103 capable of performing the operations recited by claim 44. Figure 4 is described in detail on page 16, line 20 through page 21, line 5, in accordance with some embodiments.

**Grounds For Rejection To Be Argued On Appeal:**

- I. Claims 38-41, 43-47, and 49 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,349,329 to *Mackintosh et al.* (hereinafter "Mackintosh").
- II. Claims 42 and 48 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,349,329 to *Mackintosh et al.* (hereinafter "Mackintosh") in view of U.S. Patent No. 6,012,086 to *Lowell* (hereinafter "Lowell").

**Arguments:**

- I. Rejection of claims 38-41, 43-47, and 49 under 35 U.S.C. §102(e) was improper because Mackintosh failed to teach each and every limitation.

It is well settled that anticipation under 35 U.S.C. §102 requires the disclosure in a signal piece of prior art to teach **each and every** limitation of a claimed invention. *Electro Med. Sys. S.A. v. Cooper Life Sciences*, 34 F.3d 1048, 1052, 32 USPQ2d 1017, 1019 (Fed. Cir. 1994). . MPEP 2131 states, "TO ANTICIPATE A CLAIM, THE REFERENCE MUST TEACH EVERY ELEMENT OF THE CLAIM" and "a claim is anticipated only if each and every element as set forth in the claim is found, either

expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Furthermore, anticipation requires that each claim element must be identical to a corresponding element in the applied reference. *Glaverbel Société Anonyme v. Northlake Mktg & Supply, Inc.*, 45 F.3d 1550, 1554 (Fed. Cir. 1995). Thus, to anticipate the present invention, Mackintosh must disclose every element recited in the pending claims.

Claim 38 recites a "Web browser application for an Internet-connectable audio-player device, comprising:

a mechanism for invoking a Universal resource Locator (URL) of an accessible site on the Internet; and

functionality for reading embedded code in the site to find a link to downloadable audio content;

wherein the browser determines a link is a link to downloadable audio content by presence of code for initiating an audio player application."

In contrast, Mackintosh merely teaches a method for providing supplemental material to include with broadcast material. The broadcast material of Mackintosh may, for example, comprise a radio broadcast delivered from a service provider to a user terminal via the Internet. Program data, such as a song identification or type, or radio station identification, may be provided to the user terminal along with the radio broadcast. Upon receiving the broadcast material and program data, the user terminal may provide the user with the broadcast material and may use the program data to retrieve information, such as a URL, pertaining to supplemental materials from a data server. The data server may use the program data to determine a URL identifying a location from where the user terminal may retrieve supplemental materials. The supplemental materials may include images, videos, audios, text or other data, which may be played/displayed to the user concurrently with the broadcast material. The data

server may then provide the URL to the user terminal, which may use the URL to retrieve the supplemental material.

Even assuming for the sake of argument that the data server of Mackintosh reads on "an accessible site on the Internet," Mackintosh fails entirely to disclose, expressly or inherently, "reading embedded code" in the data server to find "a link to downloadable audio content" and determining that the "link is a link to downloadable audio content by presence of code for initiating an audio player application."

Mackintosh simply does not disclose the reading of embedded codes. The user terminal of Mackintosh does not read anything on the data server, much less read embedded codes. The user terminal merely provides information and receives information. Further, even if the functionality is implemented as a distributed process, with the data server performing the read operation, Mackintosh still fails to disclose "reading embedded code," as is claimed in claim 38. The data server of Mackintosh simply reads data to determine a URL. Nothing in Mackintosh discloses, expressly or inherently, the reading of "embedded codes," by the data server.

Even assuming for the sake of argument that providing program data and receiving a URL somehow reads on reading embedded codes to find a link (a point with which Applicant vigorously disagrees), Mackintosh fails to disclose, expressly or inherently, determining that the URL/link is a link to downloadable audio content by presence of code for initiating an audio player application. Mackintosh does not teach any sort of determination regarding what type of supplemental material the URL links to, much less a determination based on the "presence of code for initiating an audio player application." Nothing in Mackintosh even discusses looking for audio player application initialization codes, or using such codes in any fashion.

Accordingly, Mackintosh fails to anticipate at least the required recitations of claim 38 of "functionality for reading embedded codes in the site to find a link to

downloadable audio content” and determining “a link is a link to downloadable audio content by presence of code for initiating an audio player application.” Since §102 rejections require clear, unequivocal anticipation of the required limitations, and Mackintosh fails to meet this standard, claim 38 is patentable over Mackintosh.

Claim 44 includes language similar to that of claim 38, directed to a method of the present invention. Accordingly, claim 44 is patentable over Mackintosh for at least the same reasons as claim 38.

Furthermore, claims 39-41, 43, 45-47, and 49 depend from claims 38 and 44, incorporating their limitations, respectively. Therefore, claims 39-41, 43, 45-47, and 49 are patentable over Mackintosh for at least the same reasons as claims 38 and 44.

II. Rejection of claims 42 and 48 under 35 U.S.C. §103(a) was improper because Mackintosh and Lowell, alone or in combination, fail to teach or suggest the claimed invention when the invention as claimed in claims 42 and 48 is viewed as a whole.

As stated above, Mackintosh fails to teach or suggest required, recited operations of the present invention, as claimed in claims 38 and 44. Lowell fails to cure these deficiencies. Accordingly, for at least the foregoing reasons, claims 38 and 44 are patentable over Mackintosh and Lowell, individually or in combination, under 35 U.S.C. § 103(a).

Claims 42 and 48 depend from claims 38 and 44, respectively, incorporating their limitations. Consequently, for at least the same reasons, claims 42 and 48 are patentable over Mackintosh and Lowell, individually or in combination, under 35 U.S.C. § 103(a).

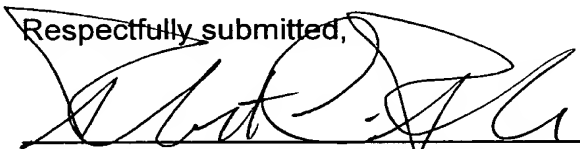


**Conclusion**

Appellant respectfully submits that all the appealed claims in this application are patentable and requests that the Board of Patent Appeals and Interferences overrule the Examiner and direct allowance of the rejected claims.

The fees associated with the appeal brief were submitted with the original appeal brief. We do not believe any additional fees, in particular extension of time fees, are needed. However, should that be necessary, please charge our deposit account 500393. In addition, please charge any shortages and credit any overages to Deposit Account No. 500393.

Date: November 10, 2006

Respectfully submitted,  
  
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## **Appendix A – Appealed Claims**

38. (Previously Presented) A Web browser application for an Internet-connectable audio-player device, comprising:

a mechanism for invoking a Universal resource Locator (URL) of an accessible site on the Internet; and

functionality for reading embedded code in the site to find a link to downloadable audio content;

wherein the browser determines a link is a link to downloadable audio content by presence of code for initiating an audio player application.

39. (Previously Presented) The Web browser application of claim 38 wherein the audio-player device is an Internet radio.

40. (Previously Presented) The Web browser application of claim 38 wherein the audio-player device is a personal computer.

41. (Previously Presented) The Web browser application of claim 38 wherein, after determining a link is a link to downloadable audio content, the Web browser application invokes the link and downloads an audio stream provided at the destination of the link to the audio player device.

42. (Previously Presented) The Web browser application of claim 41 wherein the Web site comprises more than one link to downloadable audio content, and the browser invokes a first link and downloads audio content from the first link for a preprogrammed time period, then continues reading the embedded code for a second

link, and if a second link is found accesses the second link and downloads audio content from the second link for the preprogrammed time period.

43. (Previously Presented) The Web browser application of claim 41 wherein the link to downloadable audio content is a live broadcast radio audio stream offered over the Internet.

44. (Previously Presented) A method for finding and invoking live audio data streams associated with links on a Web site, comprising steps of:

- (a) invoking a Universal resource Locator (URL) of an accessible site on the Internet from an Internet-connectable audio-player device;

- (b) upon accessing the accessible site, reading embedded code in the site to find a link to downloadable audio content; and

- (c) determining a link is a link to downloadable audio content by presence of code for initiating an audio player application.

45. (Previously Presented) The method of claim 44 wherein the audio-player device is an Internet radio.

46. (Previously Presented) The method of claim 44 wherein the audio-player device is a personal computer.

47. (Previously Presented) The method of claim 44 wherein, after step (c) determining a link is a link to downloadable audio content, performing a step (d) invoking the link and downloading an audio stream provided at the destination of the link to the audio player device.

48. (Previously Presented) The method of claim 47 wherein the Web site comprises more than one link to downloadable audio content, and the browser invokes a first link and downloads audio content from the first link for a preprogrammed time period, then continues reading the embedded code for a second link, and if a second link is found accesses the second link and downloads audio content from the second link for the preprogrammed time period.

49. (Previously Presented) The method of claim 47 wherein the link to downloadable audio content is a live broadcast radio audio stream offered over the Internet.



## **Appendix B – Copies of Evidence Submitted**

No evidence has been submitted under 37 C.F.R. 1.130, 1.131, or 1.132. No evidence entered by Examiner has been relied upon by Appellants in the appeal.



## **Appendix C – Related Proceedings**

There are no related appeals or interference proceedings currently pending, which would directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.